

111TH CONGRESS
1ST SESSION

H. R. 2550

To amend the Securities Exchange Act of 1934 to require the registration
of municipal financial advisers.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2009

Mr. DRIEHAUS (for himself, Mr. AL GREEN of Texas, Mr. FRANK of Massachusetts, Mr. BACA, Mr. CLEAVER, Mr. MORAN of Virginia, Mr. ANDREWS, and Mr. CONNOLLY of Virginia) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to require
the registration of municipal financial advisers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Municipal Advisers
5 Regulation Act”.

1 **SEC. 2. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
2 **REQUIREMENT.**

3 (a) IN GENERAL.—The Securities Exchange Act of
4 1934 is amended by inserting after section 15E (15
5 U.S.C. 78o–7) the following new section:

6 **“SEC. 15F. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
7 **REQUIREMENT.**

8 “(a)(1) It shall be unlawful for any person that is
9 either a person other than a natural person or a natural
10 person not associated with a municipal financial adviser
11 which is a person other than a natural person to make
12 use of the mails or any means or instrumentality of inter-
13 state commerce to act as a municipal financial adviser un-
14 less such person is registered as a municipal financial ad-
15 viser in accordance with subsection (b).

16 “(2) The Commission, by rule or order, as it deems
17 consistent with the public interest and the protection of
18 investors, may conditionally or unconditionally exempt
19 from paragraph (1) of this section any municipal financial
20 adviser or class of municipal financial advisers specified
21 in such rule or order.

22 “(b)(1) A municipal financial adviser may be reg-
23 istered by filing with the Commission an application for
24 registration in such form and containing such information
25 and documents concerning such municipal financial ad-
26 viser and any persons associated with such municipal fi-

1 nancial adviser as the Commission, by rule, may prescribe
2 as necessary or appropriate in the public interest or for
3 the protection of investors. Within 45 days of the date of
4 the filing of such application (or within such longer period
5 as to which the applicant consents), the Commission
6 shall—

7 “(A) by order grant registration, or

8 “(B) institute proceedings to determine whether
9 registration should be denied. Such proceedings shall
10 include notice of the grounds for denial under con-
11 sideration and opportunity for hearing and shall be
12 concluded within 120 days of the date of the filing
13 of the application for registration. At the conclusion
14 of such proceedings, the Commission, by order, shall
15 grant or deny such registration. The Commission
16 may extend the time for conclusion of such pro-
17 ceedings for up to 90 days if it finds good cause for
18 such extension and publishes its reasons for so find-
19 ing or for such longer period as to which the appli-
20 cant consents.

21 The Commission shall grant such registration if the
22 Commission finds that the requirements of this sec-
23 tion are satisfied. The Commission shall deny such
24 registration if it does not make such a finding or if
25 it finds that if the applicant were so registered, its

1 registration would be subject to suspension or rev-
2 ocation under paragraph (4).

3 “(2) An application for registration of a municipal
4 financial adviser to be formed or organized may be made
5 by a municipal financial adviser to which the municipal
6 financial adviser to be formed or organized is to be the
7 successor. Such application, in such form as the Commis-
8 sion, by rule, may prescribe, shall contain such informa-
9 tion and documents concerning the applicant, the suc-
10 cessor, and any persons associated with the applicant or
11 the successor, as the Commission, by rule, may prescribe
12 as necessary or appropriate in the public interest or for
13 the protection of investors. The grant or denial of registra-
14 tion to such an applicant shall be in accordance with the
15 procedures set forth in paragraph (1) of this subsection.
16 If the Commission grants such registration, the registra-
17 tion shall terminate on the 45th day after the effective
18 date thereof, unless prior thereto the successor shall, in
19 accordance with such rules and regulations as the Com-
20 mission may prescribe, adopt the application for registra-
21 tion as its own.

22 “(3) Any provision of this title (other than section
23 5 and subsection (a) of this section) which prohibits any
24 act, practice, or course of business if the mails or any
25 means or instrumentality of interstate commerce is used

1 in connection therewith shall also prohibit any such act,
2 practice, or course of business by any registered municipal
3 financial adviser or any person acting on behalf of such
4 a municipal financial adviser, irrespective of any use of
5 the mails or any means or instrumentality of interstate
6 commerce in connection therewith.

7 “(4) The Commission, by order, shall censure, place
8 limitations on the activities, functions, or operations of,
9 suspend for a period not exceeding 12 months, or revoke
10 the registration of any municipal financial adviser if it
11 finds, on the record after notice and opportunity for hear-
12 ing, that such censure, placing of limitations, suspension,
13 or revocation is in the public interest and that such munic-
14 ipal financial adviser, whether prior or subsequent to be-
15 coming such, or any person associated with such municipal
16 financial adviser, whether prior or subsequent to becoming
17 so associated—

18 “(A) has willfully made or caused to be made
19 in any application for registration or report required
20 to be filed with the Commission or with any other
21 appropriate regulatory agency under this title, or in
22 any proceeding before the Commission with respect
23 to registration, any statement which was at the time
24 and in the light of the circumstances under which it
25 was made false or misleading with respect to any

1 material fact, or has omitted to state in any such
2 application or report any material fact which is re-
3 quired to be stated therein;

4 “(B) has been convicted within 10 years pre-
5 ceding the filing of any application for registration
6 or at any time thereafter of any felony or mis-
7 demeanor or of a substantially equivalent crime by
8 a foreign court of competent jurisdiction which the
9 Commission finds—

10 “(i) involves the purchase or sale of any
11 security, the taking of a false oath, the making
12 of a false report, bribery, perjury, burglary, any
13 substantially equivalent activity however de-
14 nominated by the laws of the relevant foreign
15 government, or conspiracy to commit any such
16 offense;

17 “(ii) arises out of the conduct of the busi-
18 ness of a municipal financial adviser, broker,
19 dealer, municipal securities dealer, government
20 securities broker, government securities dealer,
21 investment adviser, bank, insurance company,
22 fiduciary, transfer agent, nationally recognized
23 statistical rating organization, foreign person
24 performing a function substantially equivalent
25 to any of the above, or entity or person required

1 to be registered under the Commodity Ex-
2 change Act (7 U.S.C. 1 et seq.) or any substan-
3 tially equivalent foreign statute or regulation;

4 “(iii) involves the larceny, theft, robbery,
5 extortion, forgery, counterfeiting, fraudulent
6 concealment, embezzlement, fraudulent conver-
7 sion, or misappropriation of funds, or securities,
8 or substantially equivalent activity however de-
9 nominated by the laws of the relevant foreign
10 government; or

11 “(iv) involves the violation of section 152,
12 1341, 1342, or 1343 or chapter 25 or 47 of
13 title 18, or a violation of a substantially equiva-
14 lent foreign statute;

15 “(C) is permanently or temporarily enjoined by
16 order, judgment, or decree of any court of competent
17 jurisdiction from acting as a municipal financial ad-
18 viser, investment adviser, underwriter, broker, deal-
19 er, municipal securities dealer, government securities
20 broker, government securities dealer, transfer agent,
21 nationally recognized statistical rating organization,
22 foreign person performing a function substantially
23 equivalent to any of the above, or entity or person
24 required to be registered under the Commodity Ex-
25 change Act or any substantially equivalent foreign

1 statute or regulation, or as an affiliated person or
2 employee of any investment company, bank, insur-
3 ance company, foreign entity substantially equivalent
4 to any of the above, or entity or person required to
5 be registered under the Commodity Exchange Act or
6 any substantially equivalent foreign statute or regu-
7 lation or from engaging in or continuing any con-
8 duct or practice in connection with any such activity,
9 or in connection with the purchase or sale of any se-
10 curity;

11 “(D) has willfully violated any provision of the
12 Securities Act of 1933, the Investment Advisers Act
13 of 1940, the Investment Company Act of 1940, the
14 Commodity Exchange Act, this title, the rules or
15 regulations under any of such statutes, or is unable
16 to comply with any such provision;

17 “(E) has willfully aided, abetted, counseled,
18 commanded, induced, or procured the violation by
19 any other person of any provision of the Securities
20 Act of 1933, the Investment Advisers Act of 1940,
21 the Investment Company Act of 1940, the Com-
22 modity Exchange Act, this title, the rules or regula-
23 tions under any of such statutes, or has failed rea-
24 sonably to supervise, with a view to preventing viola-
25 tions of the provisions of such statutes, rules, and

1 regulations, another person who commits such a vio-
2 lation, if such other person is subject to his super-
3 vision. For the purposes of this subparagraph, no
4 person shall be deemed to have failed reasonably to
5 supervise any other person, if—

6 “(i) there have been established proce-
7 dures, and a system for applying such proce-
8 dures, which would reasonably be expected to
9 prevent and detect, insofar as practicable, any
10 such violation by such other person, and

11 “(ii) such person has reasonably dis-
12 charged the duties and obligations incumbent
13 upon him by reason of such procedures and sys-
14 tem without reasonable cause to believe that
15 such procedures and system were not being
16 complied with;

17 “(F) is subject to any order of the Commission
18 barring or suspending the right of the person to be
19 associated with a municipal financial adviser;

20 “(G) has been found by a foreign financial reg-
21 ulatory authority to have—

22 “(i) made or caused to be made in any ap-
23 plication for registration or report required to
24 be filed with a foreign financial regulatory au-
25 thority, or in any proceeding before a foreign fi-

1 nancial regulatory authority with respect to reg-
2 istration, any statement that was at the time
3 and in the light of the circumstances under
4 which it was made false or misleading with re-
5 spect to any material fact, or has omitted to
6 state in any application or report to the foreign
7 financial regulatory authority any material fact
8 that is required to be stated therein;

9 “(ii) violated any foreign statute or regula-
10 tion regarding transactions in securities, or con-
11 tracts of sale of a commodity for future deliv-
12 ery, traded on or subject to the rules of a con-
13 tract market or any board of trade;

14 “(iii) aided, abetted, counseled, com-
15 manded, induced, or procured the violation by
16 any person of any provision of any statutory
17 provisions enacted by a foreign government, or
18 rules or regulations thereunder, empowering a
19 foreign financial regulatory authority regarding
20 transactions in securities, or contracts of sale of
21 a commodity for future delivery, traded on or
22 subject to the rules of a contract market or any
23 board of trade, or has been found, by a foreign
24 financial regulatory authority, to have failed
25 reasonably to supervise, with a view to pre-

1 venting violations of such statutory provisions,
2 rules, and regulations, another person who com-
3 mits such a violation, if such other person is
4 subject to his supervision; or

5 “(H) is subject to any final order of a State se-
6 curities commission (or any agency or officer per-
7 forming like functions), State authority that super-
8 vises or examines banks, savings associations, or
9 credit unions, State insurance commission (or any
10 agency or office performing like functions), an ap-
11 propriate Federal banking agency (as defined in sec-
12 tion 3 of the Federal Deposit Insurance Act (12
13 U.S.C. 1813(q))), or the National Credit Union Ad-
14 ministration, that—

15 “(i) bars such person from association with
16 an entity regulated by such commission, author-
17 ity, agency, or officer, or from engaging in the
18 business of securities, insurance, banking, sav-
19 ings association activities, or credit union activi-
20 ties; or

21 “(ii) constitutes a final order based on vio-
22 lations of any laws or regulations that prohibit
23 fraudulent, manipulative, or deceptive conduct.

24 “(5) Pending final determination whether any reg-
25 istration under this subsection shall be revoked, the Com-

1 mission, by order, may suspend such registration, if such
2 suspension appears to the Commission, after notice and
3 opportunity for hearing, to be necessary or appropriate in
4 the public interest or for the protection of investors. Any
5 registered municipal financial adviser may, upon such
6 terms and conditions as the Commission deems necessary
7 or appropriate in the public interest or for the protection
8 of investors, withdraw from registration by filing a written
9 notice of withdrawal with the Commission. If the Commis-
10 sion finds that any registered municipal financial adviser
11 is no longer in existence or has ceased to do business as
12 a municipal financial adviser, the Commission, by order,
13 shall cancel the registration of such municipal financial
14 adviser.

15 “(6)(A) With respect to any person who is associated,
16 who is seeking to become associated, or, at the time of
17 the alleged misconduct, who was associated or was seeking
18 to become associated with a municipal financial adviser,
19 the Commission, by order, shall censure, place limitations
20 on the activities or functions of such person, or suspend
21 for a period not exceeding 12 months, or bar such person
22 from being associated with a municipal financial adviser,
23 if the Commission finds, on the record after notice and
24 opportunity for a hearing, that such censure, placing of

1 limitations, suspension, or bar is in the public interest and
2 that such person—

3 “(i) has committed or omitted any act, or is
4 subject to an order or finding, enumerated in sub-
5 paragraph (A), (D), or (E) of paragraph (4) of this
6 subsection;

7 “(ii) has been convicted of any offense specified
8 in subparagraph (B) of such paragraph (4) within
9 10 years of the commencement of the proceedings
10 under this paragraph; or

11 “(iii) is enjoined from any action, conduct, or
12 practice specified in subparagraph (C) of such para-
13 graph (4).

14 “(B) It shall be unlawful—

15 “(i) for any person as to whom an order under
16 subparagraph (A) is in effect, without the consent of
17 the Commission, willfully to become, or to be, associ-
18 ated with a municipal financial adviser in contraven-
19 tion of such order; or

20 “(ii) for any municipal financial adviser to per-
21 mit such a person, without the consent of the Com-
22 mission, to become or remain, a person associated
23 with the municipal financial adviser in contravention
24 of such order, if such municipal financial adviser

1 knew, or in the exercise of reasonable care should
2 have known, of such order.

3 “(7) No registered municipal financial adviser shall
4 act as such unless it meets such standards of operational
5 capability and such municipal financial adviser and all
6 natural persons associated with such municipal financial
7 adviser meet such standards of training, experience, com-
8 petence, and such other qualifications as the Commission
9 finds necessary or appropriate in the public interest or for
10 the protection of investors. The Commission shall establish
11 such standards by rules and regulations, which may—

12 “(A) specify that all or any portion of such
13 standards shall be applicable to any class of munic-
14 ipal financial advisers and persons associated with
15 municipal financial advisers;

16 “(B) require persons in any such class to pass
17 tests prescribed in accordance with such rules and
18 regulations, which tests shall, with respect to any
19 class of partners, officers, or supervisory employees
20 (which latter term may be defined by the Commis-
21 sion’s rules and regulations) engaged in the manage-
22 ment of the municipal financial adviser, include
23 questions relating to bookkeeping, accounting, super-
24 vision of employees, maintenance of records, and
25 other appropriate matters; and

1 “(C) provide that persons in any such class
2 other than municipal financial advisers and partners,
3 officers, and supervisory employees of municipal fi-
4 nancial advisers, may be qualified solely on the basis
5 of compliance with such standards of training and
6 such other qualifications as the Commission finds
7 appropriate.

8 The Commission, by rule, may prescribe reasonable fees
9 and charges to defray its costs in carrying out this para-
10 graph, including, but not limited to, fees for any test ad-
11 ministered by it or under its direction.

12 “(c)(1)(A) No municipal financial adviser shall make
13 use of the mails or any means or instrumentality of inter-
14 state commerce in connection with which such municipal
15 financial adviser engages in any fraudulent, deceptive, or
16 manipulative act or practice or violates such rules and reg-
17 ulations regarding conflicts of interest or fair practices,
18 including but not limited to rules and regulations related
19 to political contributions, as the Commission shall pre-
20 scribe in the public interest or for the protection of inves-
21 tors or to maintain fair and orderly markets.

22 “(B) The Commission shall, for the purposes of this
23 paragraph as the Commission finds necessary or appro-
24 priate in the public interest or for the protection of inves-
25 tors, by rules and regulations define, and prescribe means

1 reasonably designed to prevent, such acts and practices
2 as are fraudulent, deceptive, or manipulative.

3 “(2) If the Commission finds, after notice and oppor-
4 tunity for a hearing, that any person subject to the provi-
5 sions of this section or any rule or regulation thereunder
6 has failed to comply with any such provision, rule, or regu-
7 lation in any material respect, the Commission may pub-
8 lish its findings and issue an order requiring such person,
9 and any person who was a cause of the failure to comply
10 due to an act or omission the person knew or should have
11 known would contribute to the failure to comply, to com-
12 ply, or to take steps to effect compliance, with such provi-
13 sion or such rule or regulation thereunder upon such
14 terms and conditions and within such time as the Commis-
15 sion may specify in such order.

16 “(d) Every registered municipal financial adviser
17 shall establish, maintain, and enforce written policies and
18 procedures reasonably designed, taking into consideration
19 the nature of such municipal financial adviser’s business,
20 to prevent the misuse in violation of this title, or the rules
21 or regulations thereunder, of material, nonpublic informa-
22 tion by such municipal financial adviser or any person as-
23 sociated with such municipal financial adviser. The Com-
24 mission, as it deems necessary or appropriate in the public
25 interest or for the protection of investors, shall adopt rules

1 or regulations to require specific policies or procedures
2 reasonably designed to prevent misuse in violation of this
3 title (or the rules or regulations thereunder) of material,
4 nonpublic information.

5 “(e) A municipal financial adviser and any person as-
6 sociated with such municipal financial adviser shall be
7 deemed to have a fiduciary duty to any municipal securi-
8 ties issuer for whom such municipal financial adviser acts
9 as a municipal financial adviser. A municipal financial ad-
10 viser may not engage in any act, practice, or course of
11 business which is not consistent with a municipal financial
12 adviser’s fiduciary duty. The Commission shall, for the
13 purposes of this paragraph, by rules and regulations de-
14 fine, and prescribe means reasonably designed to prevent,
15 such acts, practices, and courses of business as are not
16 consistent with a municipal financial adviser’s fiduciary
17 duty to its clients.”.

18 (b) DEFINITION.—Section 3(a) of the Securities Ex-
19 change Act of 1934 (15 U.S.C. 78c(a)) is amended by
20 adding at the end the following new paragraph:

21 “(65) MUNICIPAL FINANCIAL ADVISER.—

22 “(A) The term ‘municipal financial adviser’
23 means a person who, for compensation, engages
24 in the business of—

1 “(i) providing advice to a municipal
2 securities issuer with respect to—

3 “(I) the issuance or proposed
4 issuance of securities, including any
5 remarketing of municipal securities
6 directly or indirectly by or on behalf
7 of a municipal securities issuer;

8 “(II) the investment of proceeds
9 from securities issued by such munic-
10 ipal securities issuer;

11 “(III) the hedging of any risks
12 associated with subclauses (I) or (II),
13 including advice as to swap agree-
14 ments (as defined in section 206A of
15 the Gramm-Leach-Bliley Act regard-
16 less of whether the counterparties
17 constitute eligible contract partici-
18 pants); or

19 “(IV) preparation of disclosure
20 documents in connection with the
21 issuance, proposed issuance, or pre-
22 vious issuance of securities issued by
23 a municipal securities issuer, includ-
24 ing, without limitation, official state-
25 ments and documents prepared in

1 connection with a written agreement
2 or contract for the benefit of holders
3 of such securities described in section
4 240.15c2–12 of title 17, Code of Fed-
5 eral Regulations; or

6 “(ii) assisting a municipal securities
7 issuer in selecting or negotiating guaran-
8 teed investment contracts or other invest-
9 ment products; or

10 “(iii) assisting any municipal securi-
11 ties issuer in the primary offering of secu-
12 rities not involving a public offering.

13 “(B) Such term does not include—

14 “(i) an attorney, if the attorney is of-
15 fering advice or providing services that are
16 of a traditional legal nature;

17 “(ii) a nationally recognized statistical
18 rating organization to the extent it is in-
19 volved in the process of developing credit
20 ratings;

21 “(iii) a registered broker-dealer when
22 acting as an underwriter, as such term is
23 defined in section 2(a)(11) of the Securi-
24 ties Act of 1933 (15 U.S.C. section
25 77b(a)(11)); or

1 “(iv) a State or any political subdivi-
2 sion thereof.

3 “(66) MUNICIPAL SECURITIES ISSUER.—The
4 term ‘municipal securities issuer’ means—

5 “(A) any entity that has the ability to
6 issue a security the interest on which is exclud-
7 able from gross income under section 103 of the
8 Internal Revenue Code of 1986 and the regula-
9 tions thereunder; or

10 “(B) any person who receives the proceeds
11 generated from the issuance of municipal secu-
12 rities.

13 “(67) PERSON ASSOCIATED WITH A MUNICIPAL
14 FINANCIAL ADVISER; ASSOCIATED PERSON OF A MU-
15 NICIPAL FINANCIAL ADVISER.—The term ‘person as-
16 sociated with a municipal financial adviser’ or ‘asso-
17 ciated person of a municipal financial adviser’ means
18 any partner, officer, director, or branch manager of
19 such municipal financial adviser (or any person oc-
20 cupying a similar status or performing similar func-
21 tions), any person directly or indirectly controlling,
22 controlled by, or under common control with such
23 municipal financial adviser, or any employee of such
24 municipal financial adviser, except that any person
25 associated with a municipal financial adviser whose

1 functions are solely clerical or ministerial shall not
2 be included in the meaning of such term for pur-
3 poses of section 15F(b) (other than paragraph (6)
4 thereof).”.

5 **SEC. 3. CONFORMING AMENDMENTS.**

6 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
7 curities Exchange Act of 1934 is amended—

8 (1) in section 15(b)(4)(B)(ii) (15 U.S.C.
9 78o(b)(4)(B)(ii)), by inserting “municipal finance
10 adviser,” after “nationally recognized statistical rat-
11 ing organization,”;

12 (2) in section 15(b)(4)(C) (15 U.S.C.
13 78o(b)(4)(C)), by inserting “municipal finance ad-
14 viser,” after “nationally recognized statistical rating
15 organization,”; and

16 (3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)),
17 by inserting “registered municipal financial adviser,”
18 after “nationally recognized statistical rating organi-
19 zation,”.

20 (b) INVESTMENT COMPANY ACT OF 1940.—The In-
21 vestment Company Act of 1940 is amended—

22 (1) in section 2(a) (15 U.S.C. 80a–2(a)), by in-
23 serting the following new paragraph:

1 “(54) The term ‘municipal finance adviser’ has
2 the same meaning as in section 3 of the Securities
3 Exchange Act of 1934.”;

4 (2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1),
5 by inserting “municipal finance adviser,” after
6 “credit rating agency,”; and

7 (3) in section 9(a)(2) (15 U.S.C. 80a–9(a)(2),
8 by inserting “municipal finance adviser,” after
9 “credit rating agency,”.

10 (c) INVESTMENT ADVISERS ACT OF 1940.—The In-
11 vestment Advisers Act of 1940 is amended—

12 (1) in section 202(a) (15 U.S.C. 80b–2(a)), by
13 inserting the following new paragraph:

14 “(29) The term ‘municipal finance adviser’ has
15 the same meaning as in Section 3 of the Securities
16 Exchange Act of 1934.”;

17 (2) in section 203(e)(2)(B) (15 U.S.C. 80b–
18 3(e)(2)(B)), by inserting “municipal finance ad-
19 viser,” after “credit rating agency,”; and

20 (3) in section 203(e)(4) (15 U.S.C. 80b–
21 3(e)(4)) is amended by inserting “municipal finance
22 adviser,” after “credit rating agency,”.

1 **SEC. 4. EFFECTIVE DATES.**

2 (a) IN GENERAL.—The amendments made by this
3 Act shall take effect 30 days after the date of the enact-
4 ment of this Act.

5 (b) EFFECTIVE DATE AND REQUIREMENTS FOR
6 REGULATIONS.—Notwithstanding subsection (a), the Se-
7 curities and Exchange Commission shall, within 120 days
8 after the date of the enactment of this Act, publish for
9 notice and public comment such regulations as are initially
10 required to implement this Act, and shall take final action
11 with respect to such regulations not later than 270 days
12 after the date of enactment of this Act.

13 (c) REGISTRATION DATE.—No person may continue
14 to act as a municipal financial adviser, as such term is
15 defined in section 3(a)(65) of the Securities Exchange Act
16 of 1934, after 30 days after the date the regulations de-
17 scribed in subsection (b) become effective unless such per-
18 son has been registered as required by the amendment
19 made by section 2 of this Act.

○